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Trade Policy Staff Committee
United States Trade Representative
600 17th Street, N.W.

PUBLIC DOCUMENT

**RE: Request To Exclude Stainless Steel Forged Fittings (of Product Group 33) From
Import Relief Under Section 203**

Dear Sir/Madam:

In a Federal Register notice dated October 26, 2001, the Office of the United States Trade Representative, Trade Policy Staff Committee, requested comments on potential action under Section 203(a) of the Trade Act of 1974 with regard to imports of certain steel. See 66 Fed. Reg. 54321 (Oct. 26, 2001). On behalf of the members of the European Stainless Steel Forged Fittings Manufacturers Association: I.M.L. Industria Meccanica Ligure; OMC Raccordi s.r.l.; M.E.G.A. S.p.A.; and Delcorte S.A. (the "ESSFFMA"), we hereby submit this exclusion request. This exclusion request covers Stainless Steel Forged Fittings of Product Group 33 of the U.S. International Trade Commission's investigation. The members of ESSFFMA are all producers of the subject merchandise.

Respectfully submitted,

John M. Gurley
Matthew J. McConkey

Enclosure (1)

**BEFORE THE
UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE**

_____)	
In the Matter of)	
)	
Steel –)	
)	Exclusion Request
Product Group 33 – Stainless Steel)	
Flanges and Fittings)	
_____)	

EXCLUSION REQUEST

ON BEHALF OF:

I.M.L. INDUSTRIA MECCANICA LIGURE; OMC RACCORDI S.R.L.;

M.E.G.A. S.P.A.; AND DELCORTE S.A.

WITH RESPECT TO STAINLESS STEEL FORGED FITTINGS OF

PRODUCT GROUP 33

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November 13, 2001

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EXCLUSION REQUEST

I. EXECUTIVE SUMMARY

On behalf of the members of the European Stainless Steel Forged Fittings Manufacturers Association: I.M.L. Industria Meccanica Ligure; OMC Raccordi s.r.l.; M.E.G.A. S.p.A.; and Delcorte S.A. (collectively referred to as the “ESSFFMA”), we hereby request that the Trade Policy Staff Committee (“TPSC”) recommend the exclusion of Stainless Steel Forged Fittings from any remedy in the Section 201 steel investigation. The members of ESSFFMA are all foreign producers of the subject merchandise.

As detailed below, ESSFFMA believes that the TPSC should consider the following basic points when considering this exclusion request for Stainless Steel Forged Fittings:

- **Consider Stainless Steel Forged Fittings Separately.** Section 201 is not designed to prevent import competition. Therefore, the TPSC should be quizzical of demands for overbroad and overreaching “remedies” that stifle free and fair trade. With that in mind, the TPSC should consider the Stainless Steel Forged Fittings imported by ESSFFMA under HTS 7307.22 separately from other Product Group 33 products for remedy purposes. The main reason for this is that the Stainless Steel Forged Fittings imported by ESSFFMA have distinct characteristics and are subject to autonomous U.S. market demand from other stainless steel items in Product Group 33. Therefore, it would be unfair to consider remedial action under Section 201 without distinguishing Stainless Steel Forged Fittings from the other distinct product families in Product Group 33.
- **Exclude Stainless Steel Forged Fittings From Any Remedy Because They Have Not Been Shown To Have Caused Any Injury.** There is no data on the record in this investigation to show that imported Stainless Steel Forged Fittings have injured any U.S. Stainless Steel Forged Fittings manufacturers. There has been little (if any) interest shown by the U.S. manufacturers of Stainless Steel Forged Fittings during this entire 201 investigation. Therefore, there is no benefit to imposing remedies on this specific product, only costs.
- **Exclude Approved Market Stainless Steel Forged Fittings From Any Remedy.** Should the TPSC decide to deny an exclusion request for Stainless Steel Forged Fittings generally, it still should exclude Stainless Steel Forged Fittings sold in the approved market (e.g., those Stainless Steel Forged Fittings that are listed on Accepted Manufacturer lists (“AML”). Indeed, there has been no finding that such approved market imports have caused “serious” injury to the domestic industry (let alone injury), and there is no support for such a finding on the record of this investigation. If approved market Stainless Steel Forged Fittings (such as those appearing on AMLs) were prevented from being imported into the United States, the remaining domestic producers could not meet U.S. demand. This would damage the national economic interests of the United States, particularly those of domestic consumers in the petrochemical and food industries that require approved market Stainless Steel Forged Fittings (such as those manufactured by the members of ESSFFMA).

II. INFORMATION REQUESTED BY THE TPSC

A. The Designation Of The Product Under Recognized Standard Or Certification (e.g., ASTM, DIN), Or The Commercial Name For The Product And The HTS Number Under Which The Product Enters The United States

The products that are subject to this exclusion request are known as “Stainless Steel Forged Fittings,” classified under subheading 7307.22 of the Harmonized Tariff Schedule (“HTS”). The ASTM standard for this product is A182.

Should the TPSC decide not to exclude Stainless Steel Forged Fittings generally from remedy, then it is requested that approved market Stainless Steel Forged Fittings (such as those produced by manufacturers found on AMLs) be excluded from remedy. Such AMLs are publicly available. In fact, the ExxonMobil AML (the industry standard) is provided as Exhibit 1. See § 2.7.

B. A Description Of The Product Based On Physical Characteristics (e.g., Chemical Composition, Metallurgical Properties, Dimensions, Surface Quality) So As To Distinguish The Product From Products For Which Exclusion Is Not Sought

The general distinguishing characteristic of this product is its tariff classification – HTS 7307.22. However, if an exclusion is not granted on this tariff classification generally, an exclusion should be granted for approved market Stainless Steel Forged Fittings (such as those that appear on AMLs (Exhibit 1, § 2.7)).

C. The Basis For Requesting An Exclusion

ESSFFMA agrees with the argument raised in the International Trade Commission (“Commission”) prehearing remedy briefs by the majority of the parties interested in Product Group 33 of this investigation (foreign and domestic producers alike) that remedies (and thus exclusion requests) should be analyzed on a much more specific basis than injury was during the initial stage of this investigation.

1. The Various Product Families Combined in Product Group 33 Should be Considered Separately For Purposes of Assigning Remedies/Issuing Exclusions

a) Section 201 Requires That Remedies Be Narrowly Tailored to Achieve Specific Goals

Under Section 201 the following tenets govern the selection of determining whether a remedy is appropriate, and if so, what that the remedy should be:

- Any remedy may not exceed the amount necessary to prevent or remedy the serious injury;¹

¹ 19 U.S.C. § § 2252(e)(3), 2253(e)(2).

- Any remedy must consider the national economic interests of the United States, and specifically the effects on consumers and on competition in domestic markets; and.²
- Any remedy must provide greater economic and social benefits than costs.³

Thus, if it is shown that there is no existing or threatened serious injury by reason of a particular steel product, then there should be no remedy against that particular steel product. Additionally, even if there is injury, if a remedy will do more harm to the economic interests of the United States as a whole than it would help (e.g., if the negative effects on U.S. consumers and on competition in the United States are greater than any possible assistance to a particular niche industry), then no remedy should be imposed. In sum, any remedy should be carefully and narrowly tailored to address specific injury and should not unnecessarily cover products.

In making its overall injury determination, the Commission voted on the very broad product groups which had been created (there were 33). Now that the data permits smaller, distinct product families to be considered separately for purposes of the remedy stage of this investigation, pursuant to Section 201, and out of fairness, a separate analysis should be undertaken by the TPSC.

b) There Are Several Product Families Within Product Group 33, And Each of Those Families Should Be Analyzed Separately (Via Tariff Classification) By The TPSC With Respect to Section 201 Remedies

Product Group 33 can be grouped under four separate HTS subheadings for stainless steel products: HTS 7307.21 (flanges); HTS 7307.22 (threaded elbows, bends and sleeves); HTS 7307.23 (butt-weld fittings); and HTS 7307.29 (other than flanges, threaded elbows, bends and sleeves, and butt-weld fittings). Stainless Steel Forged Fittings (the product which is the subject of this exclusion request) are classified under subheading HTS 7307.22. At the injury hearing, Commissioner Miller commented that Product Group 33 is composed of a “grab bag” of products.⁴

ESSFFMA supports the portions of the prehearing remedy brief filed by the law firm of Mayer, Brown & Platt on behalf of Gerlin, Inc., a domestic manufacturer of stainless steel flanges (“Gerlin prehearing remedy brief”) that address how to treat Product Group 33 for remedy purposes. Indeed, in footnote 1 of the Gerlin prehearing remedy brief, they state in relevant part:

Although the Commission has grouped together seven different tariff classifications under product category 33 for purposes of injury analysis in this proceeding, whatever remedy the Commission recommends for product category 33 should be implemented on a tariff classification specific basis, to ensure that an effective remedy is applied to each of the products within the category.

² 19 U.S.C. § § 2252(g), 2253(e)(2).

³ 19 U.S.C. § § 2253(a)(2)(F).

⁴ Commission injury hearing transcript, at 2373.

In a prehearing remedy brief filed by Boltex Manufacturing, et. al., (U.S. producers), they state in footnote 1 of their prehearing remedy brief:

The Commission should recommend that its remedy be implemented on a tariff classification specific basis in order to tailor the relief to specific products. Such implementation is particularly important if the remedy includes a quantitative restriction, lest surges in particular products within the overall quota have a devastating effect on a particular tariff classification.

Though this quote was with respect to Product Group 22 (carbon and alloy steel flanges, forged fittings, butt-welds, and tool joints), the argument applies equally here.

In sum, it appears that there is broad based consensus that for purposes of a remedy analysis, a single remedy for all items that fall within Product Group 33 should not be formulated. The corollary to this is that the various family groups of Product Group 33 should be analyzed separately for purposes of recommending product exclusions.

c) Stainless Steel Forged Fittings Are A Separate Family Group Under Product Group 33 and Should Be Reviewed Separately For Section 201 Remedy Purposes

ESSFFMA takes this opportunity to detail why Stainless Steel Forged Fittings are indeed a product family separate and independent from the other stainless steel families in Product Group 33. Again, there are four separate subheadings covering Product Group 33, and Stainless Steel Forged Fittings fall into just one of those four subheadings – HTS 7307.22.

(i) Fittings Are Different From Flanges

The Commission itself recognizes that the generic products of “fittings” and “flanges” are different: “[f]ittings and flanges are used in piping systems for connecting the bores of two or more pipes, although the products have very different purposes.”⁵ Thus, flanges cannot be used in lieu of fittings, nor can fittings be used in lieu of flanges. In addition, the HTS contains a specific subheading for stainless steel flanges - HTS 7307.21, and a specific subheading for Stainless Steel Forged Fittings – HTS 7307.22.

(ii) Stainless Steel Forged Fittings Are Different from Other Fittings, Such As Butt-Weld Fittings

It is ESSFFMA’s firm belief that when the terms “fittings” has been used in most of the briefs filed in this investigation, it has meant butt-weld fittings, and not Forged Fittings (stainless or otherwise). For example, on pages 11 and 12 of the prehearing remedy brief filed with respect

⁵ SR at TUBULAR-4.

to Product Group 22 by the law firm Schagrin Associates on behalf of a large number of domestic steel product producers,⁶ it is recognized that:

[s]ome types of fittings, **such as** butt-weld fittings, nipples, and couplings, are produced from tubular products, and pricing changes in welded tubular products can therefore affect the cost of manufacture of these fittings.

Other products in the flange and fittings category are manufactured from long products also subject to relief in this investigation.

(Emphasis added.) ESSFFMA agrees.

In addition, the HTS contains a specific subheading for stainless steel butt-weld fittings – HTS 7307.23, and a specific subheading for Stainless Steel Forged Fittings – HTS 7307.22. Finally, the Commission itself has, for Title VII purposes, found separate like products even within the fittings category.⁷ Thus, it should be recognized that there substantial differences in how the products are manufactured and how they are used.

d) Conclusion

In sum, when considering exclusions to remedies, Stainless Steel Forged Fittings should be considered in a separate category in and of themselves.

2. No Remedy Is Appropriate On Stainless Steel Forged Fittings Generally As They Were Not Shown To Be Causing Injury

The record in this investigation contains no discernable separate pricing data for Stainless Steel Forged Fittings. Thus, the TPSC “should not recommend relief on products or subproducts where relief is not necessary.”⁸ Though the briefs filed by the domestic parties either ignore Stainless Steel Forged Fittings or lump them in the same category with all fittings, such as butt-weld fittings, as detailed in this exclusion request, this is clearly improper. Indeed, on page 12 of its prehearing remedy brief filed on behalf of the European Quality Flange Producers regarding stainless steel flanges and fittings, the law firm of Hogan & Harston L.L.P. stated:

⁶ The Committee on Pipe and Tube Imports; Allied Tube & Conduit Corporation; Alloy Stainless Products Co., Inc.; American Cast Iron Pipe Company; American Steel Pipe Division; Anvil International, Inc.; Bitrek Corporation; Capitol Manufacturing Company; Century Tube Corporation; Hannibal Industries, Inc.; Ideal Forging Corporation; IPSCO Tubulars Inc.; Leavitt Tube; LTV Copperweld; Lone Star Steel Company; Maass Flange Corporation; Maverick Tube Corporation; Newport Steel Corporation, a division of the NS Group; Northwest Pipe Company; Searing Industries; Sharon Tube Company; Stupp Corporation; Tex-Tube Company; Vest Inc.; and Wheatland Tube Company (“The Committee on Pipe and Tube Imports prehearing brief”).

⁷ See e.g., Stainless Steel Butt-Weld Pipe Fittings from Japan, Korean, and Taiwan, Inv. Nos. 731-TA-376, 563 and 564, USITC Pub. 3280 (Feb. 2000)

⁸ Remedy Recommendations in Section 201 Cases, GC-I-101, 1985 ITC GCM LEXIS 92, at *20 (June 4, 1985).

To the extent that three Commissioners found serious injury in the flanges and fittings category, the European Flange Producers contend that such injury is most likely attributable to conditions in the butt-weld pipe fittings industry, and not the flange industry.

In imposing a remedy, Section 201 demands, in principle if not in letter, that the remedy be formulated as closely as possible to the U.S. industry allegedly being injured.⁹ With no evidence on the record that the Stainless Steel Forged Fittings caused any injury, ESSFFMA believes that it would be improper to impose a remedy to address the findings of injury, especially when those findings are with respect to only one particular item in a large family of products. ESSFFMA notes from the prehearing remedy briefs little, if any, domestic producer interest in applying remedies to Stainless Steel Forged Fittings. Additionally, note that Stainless Steel Forged Fittings are eligible for preferential tariff treatment from all GSP countries! Therefore, the members of ESSFFMA should not have “remedies” imposed on their product when the domestic industry appears disinterested.

3. Stainless Steel Forged Fittings Sold In The Approved Market Should Be Excluded From Any Remedy

Should the TPSC decide not to exclude Stainless Steel Forged Fittings generally from remedy, it should at least recommend that Stainless Steel Forged Fittings that are sold in the approved market be excluded from remedy.

With respect to the Commission’s consideration of various remedy proposals, the European Flange Producers prehearing remedy brief with respect to forged flanges of Product Group 22 urges the Commission to distinguish flanges that are sold in the approved market – *i.e.*, those products that are listed on AMLs maintained by end users in the oil and gas and chemical industries. The European Flange Producers convincingly argue that there is simply no evidence on the record of this investigation that imports of such high-end critical application flanges used in the oil and gas industry have injured the domestic producers. ESSFFMA agrees with this general point made by the European Flange Producers. In fact, ESSFFMA submits that this same analysis applies as well to Stainless Steel Forged Fittings.

Various foreign Stainless Steel Forged Fittings manufacturers (mostly European), have been vital suppliers to U.S. companies involved in the petrochemical and food industries. Because such imports have not been a cause of serious injury to the domestic producers, the imposition of import restrictions on these products would not serve any legitimate purpose, and thus would be contrary to the statute.

The ExxonMobil AML is typically accepted as the Stainless Steel Forged Fittings industry standard (Exhibit 1). As noted, there are only a small number of companies (foreign and domestic) on the Stainless Steel Forged Fittings AML. The reason for this is that it is not

⁹ This exclusion request is not an attempt to review the Commission’s injury vote vis-à-vis Product Group 33. However, because of the language of Section 201 with respect to remedy, the TPSC has the obligation to examine the unique distinctions of the Stainless Steel Forged Fittings product and industry when it is considering remedies.

easy to get placed on the Stainless Steel Forged Fittings AML; the process of approval involves intensive review of product quality and supplier reliability. Given the small number of competitors on the Stainless Steel Forged Fittings AML, it is obvious that competition from imports is also very limited with respect to Stainless Steel Forged Fittings. On the ExxonMobil Stainless Steel Forged Fittings AML, a number of well-established European manufacturers are listed. See Exhibit 1. However, traditional low-cost import sources such as those in China, and other developing nations are not well represented. This AML approval process will continue to exist and will protect U.S. Stainless Steel Forged Fittings producers regardless of whether the remedies are imposed pursuant to this investigation.

Another key condition of competition distinguishing the approved market AML Stainless Steel Forged Fittings from other fittings is their close relationship to the petrochemical and food industries. Because oil and gas prices have generally been increasing (thus increasing drilling activity), and because the service food industry in the United States is doing well, there is every reason to believe that demand for approved market Stainless Steel Forged Fittings will remain high.

Because of the existence of the Stainless Steel Forged Fittings AMLs, and because of the stringent requirements imposed on gaining admission onto those AMLs, if imported approved market Stainless Steel Forged Fittings were to be excluded from the U.S. market, no one would benefit, only the U.S. customers would suffer, as their demand (which is likely to remain high) could not be met. The TPSC is certainly aware that the inability of the U.S. producers to meet the required domestic demand weighs heavily towards granting a remedy exclusion. In fact, as noted in an article published on November 9, 2001, in the American Metal Market (authored by Nancy E. Kelly), two Georgia congressmen appeared at a Commission hearing and testified against the imposition of remedies on flanges. The reason for the congressmen's testimony against remedy was that the flanges that their constituents need are "unavailable domestically." In fact, Representative Nathan Deal (R. Ga.) told the Commission: "Import packages that are intended for relief and placed upon CAB and companies like it will only harm their interests and the interests of their customers, with no resulting benefits." The same is true with respect to Stainless Steel Forged Flanges.

Finally, ESSFFMA submits that differential applications of remedies to the approved market is administrable. Simply by relying on the list found at Exhibit 1, it should be relatively easy for the TPSC to ensure that any remedy proposed for Stainless Steel Forged Fittings does not inappropriately restrict imports of approved market Stainless Steel Forged Fittings.

4. Conclusion

For the foregoing reasons, ESSFFMA urges the TPSC to: (a) consider the issue of remedy for Stainless Steel Forged Fittings separately from consideration for other products included in Product Group 33; (b) recommend to the President that no import restrictions be placed on Stainless Steel Forged Fittings; and (c) recommend that approved market Stainless Steel Forged Fittings be excluded entirely from the scope of any relief granted. The members of ESSFFMA are innocent bystanders in this 201 investigation, and should be treated as such. To impose a remedy on Stainless Steel Forged Fittings would cause injury to the national economy without good reason or statutory justification.

D. The Names And Locations Of Any Producers, In The United States And Foreign Countries, Of The Product

To ESSFFMA's knowledge, the following United States producers actually manufacture the subject Stainless Steel Forged Fittings: Alloy Stainless Products, of Totowa, New Jersey; Penn Machine, of Aston, Pennsylvania; and Capitol/Campco, of Crowley, Louisiana.

To ESSFFMA's knowledge, the following foreign producers manufacture the subject Forged Fittings: I.M.L. Industria Meccanica Ligure, of Genova, Italy; OMC Raccordi s.r.l., of Piacenza, Italy; M.E.G.A. S.p.A., of Bergamo, Italy; and Delcorte S.A., of Cedex, France. In addition, ESSFFMA believes that on occasion, some Stainless Steel Forged Fittings are exported by Bothwell of Taiwan. Product from China also appears in the market sometimes, but the Chinese manufacturers are not known.

E. Total U.S. Consumption Of The Product, If Any, By Quantity And Value For Each Year From 1996 To 2000, And Projected Annual Consumption For Each Year From 2001 To 2005, With An Explanation Of The Basis For The Projection

ESSFFMA believes that from 1996 to 2000 each year, the U.S. has consumed approximately \$30,000,000 worth of Stainless Steel Forged Fittings (foreign plus domestic). This represents approximately 1901.1 MT of product each year.

ESSFFMA projects that from 2001 to 2005, the market will grow by approximately 10% each year. The basis for the projected growth is that the subject Stainless Forged Fittings are predominantly used in the petrochemical and food industries in the United States. As the U.S. demand in these sections is expected to grow, it is projected that the demand for this product will grow as well.

F. Total U.S. Production Of The Product For Each Year From 1999 To 2000, If Any

ESSFFMA believes that in both 1999 and 2000 each year, U.S. manufacturers produced approximately 30% of the Forged Fittings sold (i.e., approximately \$9,000,000 or 570.33 MT).

G. The Identity Of Any U.S.-Produced Substitute For The Product, Total U.S. Production Of The Substitute For Each Year From 1996 To 2000, And The Names Of Any U.S. Producers Of The Substitute

ESSFFMA is not aware of any U.S.-produced substitute.

Respectfully submitted,

Coudert Brothers LLP

Exhibit 1

ExxonMobil AML